



MARTHA'S VINEYARD COMMISSION

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REGIONAL PLANNING AGENCY OF DUKES COUNTY

SERVING: AQUINNAH, CHILMARK, EDGARTOWN, GOSNOLD, OAK BLUFFS TISBURY, & WEST TISBURY

Date: October 2, 2009
To: EOEAA and Ocean Advisory Commission
From: Martha's Vineyard Commission
Re: **Ocean Management Plan (June 2009 Draft)**
Martha's Vineyard Commission Comments

The Martha's Vineyard Commission commends the Commonwealth for undertaking a comprehensive planning effort for the Commonwealth's ocean waters as a framework for future development. The MVC also commends the team that worked on the Plan for the high quality professional work in collecting and analyzing a tremendous amount of data in such a short period of time. In addition, the MVC expresses its appreciation to the Executive Office of Energy and Environmental Affairs for adding a public hearing on Martha's Vineyard.

It is important that the Commonwealth, its regions, and its towns work together to provide a framework allowing Massachusetts to move aggressively to increase the generation of ocean-based renewable energy and to manage other uses of the ocean that benefit the broader community. Developing these uses must be done in a way that not only respects ecological and functional concerns – generally dealt with effectively in the draft Ocean Plan – but also other important cultural, scenic, economic, and democratic values of Massachusetts communities. The Plan should more effectively integrate these other factors, including impacts on host communities. In prioritizing the locations for ocean development that have the best ratio of positive to negative impacts today, we should all recognize that long-term needs, especially for renewable energy, may later lead to development in other areas.

The MVC is concerned that a series of methodological choices – to concentrate almost exclusively on state waters, to narrowly define avian resources and exclude consideration of migratory birds, to exclude consideration of scenic values and protection of pristine areas, and to add a somewhat vague criterion about the cumulative impact of activities – led to placing the Ocean Plan's only two commercial Wind Energy Areas in two pristine, scenic areas with a high concentrations of migratory birds.

The MVC is aware that the Commonwealth is concurrently adopting a variety of measures to encourage energy efficiency, which is clearly the most effective way to reduce consumption of fossil fuels. We urge the Commonwealth to be as aggressive in legislation to reduce energy consumption as it is in fostering renewable ocean and land-based wind energy facilities.

The MVC's remarks are prefaced with information about the importance of preserving the unique character and environment of Martha's Vineyard and about the need to move forward with efforts to develop renewable energy in a way that is compatible with these values. Then we

outline a series of concerns about the draft Ocean Plan along with recommendations for how to deal with these concerns.

The MVC is confident that these concerns will be resolved in a manner satisfactory to the Commonwealth and to the people of Dukes County. We offer our collaboration in doing so. Please note that the Commission has not taken, and will not take, any position on any specific proposals, in that it may have to review them as Developments of Regional Impact in the future.

The Vineyard, the MVC and Renewable Energy

Martha's Vineyard is one of the most exceptional places in the United States. It is a sensitive and fragile environment, both on land and sea.

During the 1970s, inappropriate development was marring the unique character and environment of Martha's Vineyard. The federal government considered enacting legislation, the Kennedy Bill, which would have created a national park similar to the Cape Cod National Seashore on a considerable portion of the Island. The federal government, the Commonwealth, and the Island community concluded that the best way to manage the Island's unique character and environment was to have the local community do it by creating the Martha's Vineyard Commission.

When the Massachusetts Legislature adopted the Martha's Vineyard Commission Act (Regulating the Protection of the Land and Waters of the Island of Martha's Vineyard, Chapter 831 of the Acts of 1977 as amended), it included the following goals.

- *The island of Martha's Vineyard possesses unique natural, historical, ecological, scientific, cultural, and other values and there is a regional and statewide interest in preserving and enhancing these values.*
- *These values are being threatened and may be irreversibly damaged by uncoordinated or inappropriate uses of the land.*
- *The protection of the health, safety and general welfare of island residents and visitors requires the establishment of a regional commission whose purpose shall be to ensure that henceforth the land usages which will be permitted are those which will not be unduly detrimental to those values or to the economy of the island.*
- *The preserving and enhancing of these values requires the designation of districts of critical planning concern and the recognition of developments of regional impact, and the review thereof by the regional commission.*
- *Such a program can protect the natural character and beauty of Martha's Vineyard and can contribute to the maintenance of sound local economies and private property values.*

It is especially important that the two regional planning agencies with regulatory authority – the Martha's Vineyard Commission and the Cape Cod Commission – retain the role that the Legislature has given to them to play a key role in managing all development within the lands and waters encompassed by their jurisdiction in order to continue to protect these resources which are important not just to the Commonwealth but to the nation and the world.

At the same time, the MVC and the Vineyard community recognize that Martha's Vineyard has significant potential for the generation of renewable energy. We anticipate that we can find

a balanced way to take advantage of this, so that it benefits the people of the Vineyard and the Commonwealth as a whole.

In fact, there is a great deal of enthusiastic support for the development of renewable energy on Martha's Vineyard. Here are a few examples of community and MVC actions:

- In the past few years, Island towns passed resolutions supporting renewable energy and set up energy committees. Island-wide efforts are coordinated by the Martha's Vineyard Energy Alliance, supported by the MVC and Vineyard Energy Project.
- In the past two years, many small turbines have been installed and currently, several towns and public entities are working on proposals for more significant installations. (Note that the one project for a wind turbine reviewed by the MVC, the Martha's Vineyard Arena, ended up being approved at a height considerably greater than they originally applied for, since the MVC considered that this was an appropriate location for a wind turbine.)
- The Martha's Vineyard Commission is working with the Town of Aquinnah on a District of Critical Planning Concern that would permit well-planned renewable energy projects including utility-scale wind turbines.
- The Towns of Edgartown and Nantucket are working together on a proposed National Offshore Renewable Energy Innovation Zone (NOREIZ) planning area and the Town of Edgartown is working on the Muskeget Channel Tidal Energy Project.
- The MVC has undertaken preparation of the Dukes County Wind Energy Facilities Siting Standards and Plan, with the collaboration of all Island towns and the Wampanoag Tribe. The MVC is currently considering designating an Island-wide Wind Energy District of Critical Planning Concern to help regulate these projects.
- The Cape Light Compact has set up the Cape and Vineyard Energy Cooperative to develop renewable energy for municipalities and other public entities. The Vineyard Energy Project is setting up the Vineyard Energy Coop, and the VEP is working on creation of a renewable energy cooperative to erect 17 ocean-based wind turbines.
- The draft Island Plan, a comprehensive regional plan initiated by the MVC (now in its final public review period before adoption by the end of the year), outlines a series of goals, objectives, and strategies to transform Martha's Vineyard into a sustainable Island. It sets the following ambitious target for the Vineyard: cut projected energy use by half using efficiency measures for buildings and transportation and produce or offset the rest, mainly from community-owned, off-shore wind turbines.

While the MVC is committed to the development of renewable energy and the population is generally supportive of these efforts, we want to do it in a way that ensures community control over how it is done.

Concerns and Recommendations

The following comments highlight several main concerns about the draft Ocean Plan identified by the Martha's Vineyard Commission.

Concern 1: Limited Consideration of Federal Waters

Despite the Plan's stated intention to coordinate planning efforts with the federal government, the plan is focused almost exclusively on state waters, with only a few mentions of adjacent

federal waters. In contrast, Rhode Island's Ocean Special Area Management Plan (Ocean SAMP) takes a much more integrated look at state and federal waters. The narrow focus in the Massachusetts Ocean Plan is not problematic with respect to smaller-scale uses, such as sand and gravel mining or aquaculture. However, it is difficult to make a good decision on the location of commercial-scale wind farms without a comprehensive look at both state and federal waters, as federal waters generally have the greatest wind resources and don't pose the same potential conflicts with local communities as do projects closer to shore.

It may well be that, all things considered, the best place for large-scale wind projects would be beyond the state waters, but it is difficult to make an informed decision without a broader analysis. However, the Plan's focus on state waters sets up a false imperative: that someplace within the expanse of the Commonwealth's waters must be suitable for commercial wind. By restricting the extent of its geographic scope, the Plan needlessly forces compromises of competing resources and values – most notably, those related to scenic considerations – instead of examining whether there are locations that extend into federal waters that can better meet commercial wind goals without requiring the high compromises from using the waters within 3 miles of the coastline.

Also the State's efforts to link the two Wind Energy Areas in state waters with a large wind farm in immediately adjacent federal blocks could have the unfortunate impact of locating a massive wind farm in a joint location that may not be optimum and which would have the greatest negative impacts on Martha's Vineyard.

Recommendations:

- 1.1 There should be carefully coordinated planning between Massachusetts, Rhode Island and the federal government for ocean waters in the area.
- 1.2 In the coming year, undertake an intensive effort applying the methodology developed with the Massachusetts Ocean Plan to adjacent federal waters.
- 1.3 Re-evaluate the recommendations on commercial wind on the basis of this analysis, using the results to make decisions on all commercial Wind Energy Areas (which we recommend below include the two areas in Dukes County as well as other potential areas), and being prepared to revise the Ocean Plan in 2010 if needed.

Concern 2: Data Analysis - Scenic Values

The lack of consideration of scenic values and their related economic impacts, especially in relation to commercial wind projects, is a major omission in the Plan that if uncorrected could lead to projects in inappropriate locations in all coastal regions of the Commonwealth.

Several elements in the Oceans Act require, or at least permit, consideration of scenic values. [emphasis added]

- The Ocean Sanctuaries Act public criteria to determine whether a proposal is “*necessary to the public interest*” includes “*whether the proposed facility or use will seriously alter or otherwise endanger the ecology or appearance of the ocean*”,
- The fifteen directives for plan development include:
 2. *Adhere to sound management practices, taking into account the existing natural, social, cultural, historic, and economic characteristics of the planning areas.*
 3. *Preserve and protect the public trust.*

10. Foster sustainable uses that capitalize on economic opportunity without significant detriment to the ecology or natural beauty of the ocean.

11. Preserve and enhance public access.

- The use of the term "appropriately-scaled" renewable energy facilities.
- The Plan indicates that by far the most economically important sector of the marine economy is coastal tourism and recreation (\$8.7 billion annually) and that the second most important activity, after swimming, is "ocean viewing".
- The appendix refers to various techniques for identifying visual resources of high value and the use of GIS tools to model and assign values to viewsheds.

Despite all of these references, protection of scenic values is inexplicably omitted from the Ocean Plan's final methodology for siting wind turbines.

As a result, there is no way to differentiate between a proposal that could have an extremely detrimental scenic impact on a coastal community, say a major wind farm just one mile from a major public open space on shore in a pristine area, and one located several miles away at the outer limits of State waters and facing an industrialized waterfront. The designation of the Plan's only two priority commercial Wind Energy Areas apparently take scenic values into account to some extent, but since the Plan cites the basis for these locations as "stakeholder comment" and not as a result of the basic methodology, there is no assurance that scenic values will be considered for future Wind Energy Areas.

Scenic values are of great importance to all areas along the Massachusetts coast, and is critical to areas such as the Cape and Islands where the economy is driven by the vacation industry. For Martha's Vineyard alone, this represents a gross domestic product of about \$800 million a year and property values of about \$18 billion. Extensive public input in the regional Island Plan indicates that protecting the Vineyard's scenic character and pristine natural beauty are very high priorities among residents and visitors.

The Gay Head Cliffs, designated a National Natural Landmark in 1965, are central to the culture of the Island's native Wampanoag Tribe of Gay Head (Aquinnah), is one of the main attractions of Martha's Vineyard, and is arguably one of the most important scenic vistas on the east coast of the United States. The people who choose to live or visit here consider scenic values to be very important. It is unacceptable that the Ocean Plan virtually ignores scenic values.

Of concern is not only the impact during the day, but also the fact that after sunset, the darkness of the ocean will be replaced by what will look like the skyline of a major city, with flashing lights from the 166 turbines the height of fifty-story buildings.

This doesn't mean that mere visibility of installations is itself a reason to exclude turbines from an area; however, it does mean that scenic values must be thoughtfully considered and impacts minimized, as with the other criteria in the Ocean Plan. The Rhode Island Ocean SAMP deals with scenic values and looks at buffers of between 8 and 20 km from adjacent shores, including the Cape and Islands.

The solution is to outline a clear, objective methodology and predictable criteria for dealing with scenic values.

Recommendations:

2.1 Add a section on scenic values to the Plan that includes the following.

- A map and criterion prioritizing locations farther off the coast of inhabited areas and, making the desirable height a function of the distance from the shore.
- Identification of shoreline land uses (open space, level of public access, residential density, commercial, industrial, etc.) as well as viewsheds and open vistas from the main public places, such as major town beaches, parks, and public waterfronts and waterfront roadways. A criterion to prioritize locations for wind turbines minimizing the visual impacts on these resources.
- Identification of pristine natural areas and a criterion to minimize impacts to these areas. (An Australian study of public perception of the impact of wind farms on scenic values indicated that the most important factor in determining whether people considered the wind farms to be an improvement or a degradation was the original scenic importance of the site);
- A criterion promoting the clustering of turbines to minimize the extent of the viewshed that is altered.
- Criteria to minimize the visual impact of projects including color, lighting, pole design, etc.

Concern 3: Data Analysis - Birds

Concern has been raised on Martha's Vineyard about several aspects of the methodology and data dealing with birds in the draft Ocean Plan. The Martha's Vineyard Commission has asked a panel of three bird experts on the Island to review this material and they have discussed it with CZM staff working on the Ocean Plan. The following are the main concerns identified so far.

- There is some concern about the adequacy of data, even for the limited number of bird species that were addressed in the plan. The Plan relied heavily upon data from Mass Audubon and Bird Observer for input concerning avian activity in and over state waters, but for various reasons Vineyard birders rarely submit observations to these organizations. Thus, the data appear to significantly under-represent the actual presence of birds on or migrating past the Vineyard.
- The draft Plan doesn't appear to adequately consider the National Wildlife Refuge status of Noman's Land. Development is prohibited from the entire coast of the Cape Cod National Seashore, yet there is a commercial Wind Energy Area that extends almost to the shores of Noman's Land. The impacts of noise and lights on the Refuge must be ascertained before considering locating a wind farm in the vicinity. This island is one of two known nesting areas in Massachusetts for Leach's Storm Petrel, a nocturnal species whose habits and potential response to wind developments are not well known. It is also a well-known stopover for migrating songbirds and the falcons which gather to feed on them, all of which could be vulnerable to collision with wind energy facilities, particularly in bad weather when they may be expected to fly low to the water.
- It is not clear that the Plan adequately considers and plans for the natural changes that take place in habitats and areas of concentration of various species. For example, tern nesting colonies can be expected to change location with time. (The displacement of many terns from a traditional colony on Monomoy to the opening in Norton Point Beach this past summer is a good illustration of this aspect of tern natural history.) It might be better to extend some protection to historical colony sites, or the best potential nest sites, as well

as existing colonies, in order to ensure that terns will have adequate ability to respond to shifts in food resources, impacts to existing colonies, or other factors prompting the relocation of colonies.

- The methodology focused too narrowly on a few rare species and doesn't adequately deal with the large number of species that make an important contribution to the avian biomass, especially the large numbers of sea ducks wintering off the western end of Martha's Vineyard.
- There is little or no discussion of bird migration, and especially the critical role that Noman's Land, the Elizabeth Islands, and Martha's Vineyard (especially the western part and Wasque) play in the Great Atlantic Flyway, the main migratory route of eastern North America.
- It is also noted that bird watching is an economic resource, an activity providing economic benefits to the local economy.

At this point, it is unclear whether the concerns are limited enough to be dealt with in the context of the data collection and mitigation accompanying a specific project as it goes ahead, or whether the concerns are significant enough to require a modification of the Plan, especially the location and/or configuration of the Wind Energy Areas.

The MVC will await the results of the discussion between the Vineyard bird experts and those who worked on the plan before formulating a recommendation about the avian data and analysis.

Concern 4: Commercial Wind Energy Areas - Designation

The Plan does not make clear why the only two designated Wind Energy Areas in Massachusetts are the two located in Dukes County. After extensive discussion of the scientific methodology and the analysis of each of the criteria, the final selection of these areas is barely explained with a rather vague paragraph on page 4-4, including the somewhat cryptic sentence "After screening to identify potential sites using the exclusionary criteria, EEA considered the overall weight of existing information (including qualitative data, data used in the compatibility assessment, and stakeholder input and public comment)."

The Plan's incomplete explanation of the final decision-making process resulted in the impression that the choice was more political than scientific. Some Vineyard public officials have expressed serious concerns, including that that most of Massachusetts has effectively said "not in my back yard" by locating these wind farms as far from the majority of the Massachusetts population and as close to the Rhode Island border as possible, and putting them in two towns with populations too small to effectively protest. It has been suggested that the people of the Vineyard are prepared to bear their share of the load associated with developing more renewable energy along with everyone else; but that doesn't seem to be what is happening. Concern has been expressed that virtually all the industrial-scale wind development has been concentrated on both sides of Martha's Vineyard, and that adding the 166 turbines of the Ocean Plan to the 130 turbines of Cape Wind would transform what is now one of the most special places on the east coast, a beautiful island surrounded by a pristine ocean.

The MVC appreciates the brief explanation of the selection process for Renewable Energy Areas that was given at the September 23 public hearing on the Vineyard. However, this process

should be revised and more thoroughly explained in the Plan, including an analysis of each potential area.

- There should be a clear identification of all locations that meet three basic criteria – best wind resources, absence of constraints in the Compatibility Assessment: Commercial Wind map, and optimum water depth. This analysis should also include a fourth criterion, namely including only those areas more than three miles, or at least two miles, off inhabited coasts (but still within state waters).
- We question the elimination of several potential areas based on using professional judgment to make a qualitative assessment of the cumulative effect of factors. Unless there is some specific conflict, it would seem better to put commercial wind in locations which already have other non-conflicting activities rather than in pristine areas.
- Also, since technology is changing so rapidly, we question eliminating areas on the basis of technical feasibility unless there is absolutely overwhelming evidence that these areas will not be feasible in the foreseeable future. All areas will present technical challenges, and it is best to leave it up to future bidders to make the judgment as to what is feasible.

The result of this review will likely be to identify other areas that are equally suitable for commercial scale Wind Energy Areas in addition to the two identified in the draft Plan. This poses a dilemma, namely adding these areas to the final Plan without having raised this possibility in the draft, thereby depriving the public of an opportunity to react.

At the same time, it would appear to be impossible to resolve by the end of this year all the significant concerns raised in reaction to the proposed Noman's and Cuttyhunk areas as should be done before officially designating them. Indeed, it would be prudent to identify these two areas also as "provisional", in that they have particular issues that must be addressed – as the draft Plan mentions for the other provisional areas.

Recommendation:

- 4.1 Revise the analysis of potential Wind Energy Areas, adding a meaningful buffer for scenic values and eliminating the factors of cumulative impact and technical feasibility.
- 4.2 Designate all the areas that are identified in the revised analysis, including the Noman's and Cuttyhunk sites, as Provisional Areas.
- 4.3 Outline a process for additional technical analysis and public input over the coming year to make a determination as to which Provisional Areas would proceed.

Concern 5: Community Wind

The principle is sound of allowing for modest wind facilities throughout most of Massachusetts coastal waters provided they are supported by the boards of selectmen of the towns in which they are located and by the RPA with regulatory authority and provided they meet Ocean Plan criteria for Special, Sensitive, and Unique areas.

The premise that each region should have the same allocation of turbines is never explained in the Plan. It probably makes more sense to allow regional variation in the number of turbines (based on population, length of coastline, quality of wind resources, number of towns, etc.) provided that town and RPA approvals are required. However, eliminating regional limits altogether could undermine the effort to direct large-scale projects into the unconstrained

commercial Wind Energy Areas, as developers could propose relatively large scale commercial projects in less desirable parts of the Multi-Use Area, and still get those projects approved.

The Plan gives the responsibility of allocating the ten turbines within each region to the regional planning agencies. Presumably this will be based on a combination of the absence of constraints as outlined in the Ocean Plan and interest on the part of towns to host these facilities.

Recommendations:

- 5.1 The Plan should remove the uniform number of community wind turbines for each region.
- 5.2 The coastal RPAs should work in concert with EEA over the next two months to determine the need for a cap and, if so, to develop a basis for determining the desirable number of turbines within each region and for allocating them among the regions' towns.

Concern 6: Relation between Town, RPA and Commonwealth Approval Processes

The people of Dukes County need to play a central role in the decision making process related to development in the area's lands and waters. A large number of individuals and organizations have been fighting for decades to protect the unique natural and cultural resources of Martha's Vineyard from inappropriate development; many have serious concerns about the proposed development that is proposed in the Ocean Plan. It is essential that the community have a real voice, a real seat at the table in determining what happens here.

Recent discussions about what approvals should and should not be required for projects in the ocean (as well as similar discussions on land with the Wind Energy Facilities Siting Reform Act) highlight the need for a clear review and approval process, spelled out in the Plan, which acknowledges the Commonwealth's concern that not all projects are denied and the towns' concerns that projects not be imposed irrespective of local concerns. This process should make clear to potential developers that both Commonwealth concerns and local concerns are actively considered in all stages of review.

It would be preferable to have a cooperative process between the Commonwealth, municipalities and Tribes for meaningful and early collaboration on planning for renewable energy, and on managing development projects.

Recommendations:

- 6.1 The Plan should clearly state that all developments in the ocean, including commercial wind, are subject to the normal review and permitting procedures of towns and regional planning agencies with regulatory authority, in conformance with the RPA's enabling legislation.
- 6.2 The requirement should remain in the Ocean Plan that town boards of selectmen must endorse community wind projects and that they are subject to the approval of regional planning agencies with regulatory authority and clarify that conditions and denials are not appealable to the EFSB.
- 6.3 Any appeal of town or RPA decisions to the EFSB for renewable energy projects exceeding the threshold for EFSB review – other than community wind which according to the Plan would be exempt from EFSB review – should be structured in a way that legitimate local and regional concerns are not summarily dismissed. The level of review of RPA decisions should be very high, and not overturned without substantial reason.

- 6.4 The Plan should make direct reference to the goals and purpose of the enabling legislation of RPA so that, if EFSB reviews proposals, consistency with Ocean Plan would include consistency with the goals and purpose of RPAs.
- 6.5 The Plan should outline the basic principles of the process going from a Plan to actual projects. This should include an open, competitive bidding process for leases, to be based not only on financial considerations but also on other concerns such as minimizing environmental impact and maximizing local benefit.
- 6.6 It is proposed that representatives of RPAs, especially those with regulatory authority, representatives of towns likely to host commercial wind projects, the Wampanoag Tribe, and Ocean Plan representatives work over the next eight weeks on a protocol which allows for meaningful involvement of all these entities at all stages of the project planning and approval process. This would include early collaboration on future development projects between the town, RPA, and the Commonwealth (both EOEEA and whatever entity will be responsible for calling for and reviewing developer proposals in state waters) in all stages between the completion of the Ocean Plan and completion of projects, including the pre-planning stages to set the parameters of any RFP and then working with developers to outline studies and shape the project. The aim is to avoid a situation where a developer has invested significantly in preparing a proposal before it is submitted for town or RPA consideration. This should include phased approvals by all parties so that we can close in on the optimum project design in mutually agreed steps. This would reduce the cost and delay for the developer.

With respect to the approval process, this should involve a provision involving the Regional Planning Agencies with regulatory authority (i.e. CCC and MVC) in the definition of "appropriate scale". It is proposed that in Chapter 4, on page 4-12, the following be inserted after subparagraph 7: *Within state waters which are also within the jurisdiction of a regional planning agency, the appropriate scale of tidal, wave and wind projects shall also be defined by regulations adopted by the respective regional planning agencies which shall supplement the criteria for appropriate scale adopted by the secretary of EEA and the Department of Environmental Protection.*

It is also recommended that in Chapter 4, pages 4-20, "Relationship with State, Regional, Local Regulation Jurisdiction", the following third paragraph be added: *The Secretary shall consult with regional planning agencies which have adopted regional plans, and with municipalities which have adopted local comprehensive plans or master plans, to ensure the maximum feasible consistency between such plans and all revisions and amendments to the ocean plan. Regional planning agencies shall ensure consistency between their regional plans and their regulations governing the appropriate scale of tidal, wave and wind projects.*

Finally, the Plan should say that if an RPA has adopted a District of Critical Planning Concern incorporating a siting plan and standards consistent with their enabling legislation (the MVC Act, c.831 of the Acts of 1997 and the CCC Act, c 716 of the Acts of 1989), the Plan should specify that any project must comply with this plan and these standards.

Concern 7: Local Benefit and Mitigation

The Plan states that community and commercial wind energy projects should provide direct economic benefit to the community in which they are located. While commercial scale projects will provide the greatest general benefits, they will also have the greatest impact on their host communities and it is appropriate that developments mitigate these direct and indirect impacts by providing direct benefits to host communities and to the Commonwealth.

The fact that community wind projects need support from the Board of Selectmen and the RPA gives these organizations the ability to negotiate acceptable local benefit. However, since it is not clear that these entities will have the same absolute decision-making authority, it is probably desirable that the requirement for local benefit and its scale and nature be spelled out in more detail in the Plan.

It is important to differentiate between three different types of fee.

- Mitigation fees should be assessed for direct impacts to the resources protected by the Ocean Sanctuary Act and there should be a direct nexus and proportionality between the impact and the mitigation charged. These fees should be paid into the Mitigation Trust Fund and used exclusively to mitigate impacts in the same geographic area as generated.
- Royalties or user fees are essentially rent for use of public waters. They should be assessed for the use of public property and to mitigate the indirect impacts relative to the public trust doctrine that protects the public's rights to a pristine resource. The royalties should not be held to the same nexus criteria. They should be shared between the Commonwealth and host communities, possibly 50% each, or using the formula used by the federal government (Minerals Management Service) which requires that 27% of the royalties go to the local share.
- A fund or bonding to address decommissioning, environmental disasters, and impacts not predicted at permitting stage such as by requiring the posting of bonds.

The compensation to host communities should take into account the other offsetting benefits. For example, since commercial windfarms in the proposed locations would likely provide significant economic and employment benefits to New Bedford such as assembling and shipping, and would have only minimal impact involving connecting an underwater cable to an existing substation, there would not appear to be any reason that it should receive any mitigation or royalties.

There is confusion in the use of the term "community" as used in the Plan, which sometimes is used in the broader sense and sometimes to mean a town. For Martha's Vineyard, while the host towns will have the greatest impacts, the whole Island will be impacted, and it is appropriate that local benefits be for a combination of the town and the region.

Recommendations:

- 7.1 The Plan should clearly require that both community wind and commercial wind projects provide direct economic and other benefits to their host communities (town(s) and, where appropriate, region). For community wind projects, the fact that the Board of Selectmen and the RPA must approve the project gives them the ability to negotiate appropriate mitigation and royalties. However, for commercial projects, EEA and potential host communities should, before the Plan is finalized, consider of whether the "community benefit" requirement should remain open-ended as in the draft or whether the Plan should

require, or allow towns and RPAs to require, one or a combination of mitigating actions of commercial projects such as the following.

- Requiring or facilitating that a portion of a private project be locally owned.
- Including a fixed rate for royalties and a fixed percentage of these royalties that are directed to local communities.
- Allowing for royalties to offset general impacts on the community such as mitigating impacts on scenic values by scenic improvements on land in host communities, such as landscaping public areas and burial of electric wires.
- Requiring that most or all of the royalties be directed to achieving sustainability objectives, especially related to energy. This could be part of a partnership between the Commonwealth and the local communities to transform Martha's Vineyard and Gosnold into model prototype "sustainable islands", with efforts such as funding energy-efficiency programs in host communities, connecting Gosnold to the electric grid so power is no longer generated from diesel generators, setting up prototype projects for energy-efficient transportation, etc.

7.2 The process for meaningful and early collaboration on future development projects between towns, RPAs, and the Commonwealth described above should integrate local benefit in the pre-planning stages setting the parameters of any RFP and in the project selection process. There should be an open, competitive bidding process to select project developers. This should include a methodology similar to that used by the MMS whereby, in the leasing process for commercial wind, proposals which offer direct local benefit have priority over other equivalent commercial projects. The project selection process should include provisions favoring local preference and local benefits such as:

- Having a time period when adjacent town or a rate-payers cooperative could propose a project, before an RFP is issued;
- Having a right of first refusal for municipalities or local cooperative projects, as the MMS does; this would allow the local community to partner with a developer and incorporate community concerns directly in the partnership agreement;
- Including community benefit in project selection criteria as does MMS.

7.3 The Plan should use the term "municipality" instead of "community" when that is the intended meaning.

Concern 8: Management of Special, Sensitive, and Unique Areas

The MVC shares the concern expressed by others about the definition of SSUs, and that the proposed new MEPA standard is vague and doesn't clearly provide additional protection for SSU's compared to other locations. The data collection appears to be generally good, however, the extents of the SSUs appear to be very narrowly defined, and the number of SSUs that would have to be considered for siting each type of proposed use is quite limited. Also, the standard appears to be inadequate, placing a vague burden on the Commonwealth to demonstrate that there is no practicable alternative, and not requiring mitigation if a project should go ahead in an SSU.

The MVC notes that the Conservation Law Foundation has proposed a three-step test: 1) a clear legal presumption, rebuttable only by convincing evidence, that less damaging practical

alternatives exist outside SSUs; 2) development in an SSU provides public benefits that outweigh the negative impacts to SSU resources and habitats; and 3) the developer must design the project in such a manner that it does not cause a significant adverse impact on the resource and habitat values that the SSUs are intended to protect.

The Precautionary Principle states that if an action or policy might cause severe or irreversible harm to the public or to the environment, in the absence of a scientific consensus that harm would not ensue, the burden of proof falls on those who would advocate taking the action

Recommendations

- 8.2 Review the delineation of SSUs and the identification of which SSUs must be protected for each type of project to ensure that there is adequate protection of these resources.
- 8.3 Adopt clearer MEPA standards for review which more strongly protect SSUs.
- 8.2 Apply the Precautionary Principle when data is incomplete.

Concern 9: Wampanoag Tribe

The ocean waters in this area have great historic and cultural importance for the Wampanoag Tribe of Gay Head (Aquinnah). The Tribe's federally recognized status could give it legal standing in the approval and implementation of any projects.

Recommendation:

- 9.1 The Wampanoag Tribe of Gay Head (Aquinnah) should be integrated directly into this process now and in the future.

Conclusion

The formal consultation process involves EEA holding public hearings and receiving public testimony until November 23, 2009, and then issuing a final Plan on December 31, 2009. This process doesn't allow for the dialogue and collaboration that will be needed to satisfactorily resolve all the outstanding issues. The MVC offers to work with EEA to help facilitate efforts both with respect to the communities of Dukes County and, through other regional planning agencies, with communities throughout Massachusetts.

We would appreciate receiving information about how EEA plans to respond to our comments well before the November 23 deadline for public comments, so we have the opportunity to react and EEA can make final adjustments.

cc. Wampanoag Tribe, County Commissioners, Boards of Selectmen, Planning Boards